



# HB 429

## Board of Medical Examiners

### Testimony

#### House Human Services Committee

By Mary Anne Guggenheim, M.D.

Chairman Howard and members of the committee, my name is Dr. Mary Anne Guggenheim. I am a member of the Montana Board of Medical Examiners and am here today on the Board's behalf to provide information if needed.

The Board appreciates the effort and significant time that has been devoted to this issue by this committee. The Board of Medical Examiners is a licensing board whose primary mission is to protect health care consumers through proper licensing and regulation. Along with physicians, the board licenses EMTs, residents, physician assistants, telemedicine physicians, podiatrists, nutritionists and acupuncturists.

The Board has been monitoring the medical marijuana certification process since the summer of 2009. After holding an informational meeting, we clearly saw a need to provide guidance to physicians who were doing certifications for medical marijuana. The Board adopted a position paper in May 2010 stressing that a standard of care must be followed. This position paper was expanded in November 2010 to note that the use of teleconference technologies does not meet the standard of care.

The Board would like to point out a couple of items for your consideration. HB 429 modifies the laws related to the practice of telemedicine. This clarifies that physicians who hold telemedicine licenses cannot obtain information for the physician affidavit by telemedicine devices. We would like to note that this only impacts only individuals with a telemedicine license, and not those with a physician license who might use teleconferencing for obtaining information for the same reason.

The bill also anticipates a physician will determine the forms of usable marijuana for a patient. This, like dosing, may be problematic as it is not a pharmacologic product for which there is standardization. The Board would not be able to assess in any given complaint whether the "usable form" met an approved standard of care.

The Board is already well positioned to identify clinical standards to protect the general public's safety as well as the safety of patients. We believe an ongoing relationship with a physician is needed to ensure this drug is actually being effective in easing pain or discomfort. The board is prepared to discipline physicians who do not follow the expected standard of care and has in place a well established complaint process.

The board is grateful for the interest to ensure "bad medicine" does not grow from the public's desire to see compassionate care and pain relief to those individuals stricken with painful illnesses and diseases.

I have provided a copy of the position paper with my written testimony. Thank you for your thoughtful consideration of this bill. I am available to answer questions.

## Board Members

### Emergency Medical Technician

Ryan Burke, EMT-P

Great Falls • 406/731-3746

### Nutritionist

Pat Bollinger, MS RD

Helena • 406/443-0134

### Physicians

Dean Center, MD

Bozeman • 406/556-9740

Anna Earl, MD

Chester • 406/759-5194

Mary Anne Guggenheim, MD

Helena • 406/443-5006

Bruce Hayward, DO

McAllister • 406/682-7459

Kristin Spanjian, MD

Billings • 406/861-4895

James Upchurch, MD

Hardin • 406/665-5233

### Physician Assistant

Dwight Thompson, PA-C

Harlowton • 406/632-3170

### Podiatrist

Nathan Thomas, DPM

Missoula • 406/542-2108

### Public Members

Carole Erickson

Missoula • 406/370-8555

Eileen Sheehy

Billings • 406/281-5600

### MT Academy of PAs Liaison

Kay Bills-Kazimi, PA

Helena • 406/457-9050

## Board Office

Jean Branscum, Executive Director

Helena • 406/841-2360



## Certifications by Teleconference

The Board of Medical Examiners ruled that the use of teleconference technology for initial medical marijuana certifications does not meet standard of care, amending the position paper in November 2010.

The public expects, and deserves, a certain level of quality to be delivered. The board has noted those who are seeking certifications have debilitating conditions that demand physician attentiveness and ongoing monitoring. Physicians should complete a "hands on" physical examination. Further, the physician should complete the full assessment themselves and not delegate a part of the certification process to other medical staff.

## Complaints

The Board of Medical Examiners has had seven complaints filed against physicians that relate to medical marijuana. Disciplinary action was taken against one physician, one physician has been noticed, four complaints were dismissed, and one is under review.

## Medical Marijuana Certifications

As of December 10, 2010 there are 359 physicians in the state of Montana who have certified one or more patients for medical marijuana. This is 9% of physicians who hold an active license.

Approximately 32 physicians have certified over 100 patients. Current law does not permit the Board to look more closely at physicians who are certifying high numbers of individuals.

Current law also does not give the BOME authority to look at physicians practicing in a work environment that advertises certifications will be done quickly, with or without medical records.

The law is clear that BOME can create a board generated complaint if it knows the licensee by name working in such work environments. The BOME has found it difficult to obtain names.

*Physicians should not toss their medical education and training out the window to certify an individual for medical marijuana.*

## Standard of Care: Board Position Paper Clarifies and Protects

In May 2010, the Board of Medical Examiners adopted a position paper to provide needed guidance to physicians engaged in medical marijuana certifications. The position paper has served as a guiding post on physician care for the BOME, physicians, patients, and other state agencies.

### ***Physician's Written Certification for Medical Marijuana and the Bona Fide Physician-Patient Relationship***

In 2004 Montana voters approved the use of medical marijuana through the passage of Initiative 148 which was codified as The Medical Marijuana Act ("The Act") in Title 50, Chapter 46. The Act permits individuals to grow, possess and use marijuana to treat certain chronic medical conditions, and permits other individuals, called caregivers, to grow, possess and transfer marijuana to designated clients who are certified to use marijuana for medical conditions. According to the Act, in order for a person to be permitted to use marijuana for a medical condition, a Montana-licensed doctor of medicine or osteopathy must conduct a proper medical evaluation and certify that the person has one of the conditions specified or the patient must present his or her medical record to the Department of Public Health and Human Services which enforces the Act.

The mission of the Board of Medical Examiners is to protect the public by ensuring that physicians are properly trained and provide medical services within their scope of competence. The Board of Medical Examiners takes no position on the general suitability of marijuana in the treatment of medical disorders, but does have an obligation to protect the public by ensuring that physicians provide medical services via a bona fide physician-patient relationship that meet the generally accepted standards of care. *continued, page 3*

## Medical Marijuana Certification Position Paper, continued

The Board of Medical Examiners is concerned about reports of physicians who are certifying patients to use marijuana for medical conditions in a mass screening format and physicians who are conducting certifying evaluations exclusively through Internet consultations.

It is the Board of Medical Examiners' position that the certification of an individual to use marijuana for a medical condition requires the same standard of care as required when any conventional medication is prescribed. The Medical Marijuana Act requires the physician to conduct a "full assessment" as part of "a bona fide physician-patient relationship." (MCA 50-46-2101(11)). Therefore, a physician who certifies a patient for medical marijuana is held to the same generally accepted standards of care as apply to every other medical practice.

Generally accepted standards of care in any treatment process require the following in an amount adequate and appropriate to the patient, condition and treatment under consideration:

- Taking a medical history
- Performing a relevant physical examination
- Reviewing prior treatment and treatment response
- Obtaining and reviewing relevant diagnostic test results
- Discussing advantages, disadvantages, alternatives, potential adverse effects and expected response to the treatment recommended, and ensuring that the patient understands them
- Monitoring the response to treatment and possible adverse effects
- Creating and maintaining patient records
- Notifying the patient's primary care physician when appropriate

Consistent with 50-46-201(4), MCA, the Board of Medical Examiners will not apply a higher or special standard of care to the certification of individuals to use marijuana for medical conditions. Neither will the Board apply a lesser or special standard. If the physician fails to meet the generally accepted standards of practice when certifying a patient to use marijuana for a medical condition, the physician may be found to be practicing below the acceptable standard of care and subject to disciplinary action for unprofessional conduct.

The Board cautions physicians that a mass screening format or group evaluations, whether for student athletes or those desiring medical marijuana, inherently tend towards inadequate standards of care. A physician involved in mass screening settings or clinics offering group evaluations for medical marijuana certification must meet the standard of care which the people of Montana rightfully expect and deserve.

Similarly, a written certification provided after a patient evaluation conducted exclusively through currently available electronic methods or the Internet may be inadequate to evaluate the complex medical conditions for which marijuana is an approved therapy. The practice of telemedicine in Montana requires a Montana license and adherence to the same standards of care as required of all Montana-licensed physicians.

### Addendum

The Board of Medical Examiners recognizes the statutory requirements that a written certification for medical marijuana requires a full assessment be completed by a physician, 50-6-102, MCA. At the current time, the standard of care for physicians certifying individuals for medical marijuana requires a "hands on" physical examination by a physician. The exclusive use of teleconference methods to certify individuals does not meet this level of standard of care.

Adopted: November 19, 2010

## Questions and Answers

**Q** Why hasn't BOME shut down the traveling medical marijuana clinics?

**A** BOME does not have the legal authority to investigate a facility or business. The board may initiate an investigation against a licensee, but only if a licensee can be identified.

**Q** Can't BOME do something about physicians who are certifying hundreds of individuals?

**A** We can with your help and after you have filed a complaint with the board. The names of these physicians are oftentimes kept confidential and cannot be directly obtained by the BOME. The board will act on any complaint filed against a licensee. Seven complaints have been filed for reasons related to certifications.

**Q** Can't BOME do something about out of state physicians who are certifying individuals?

**A** The licensure laws do not require that a physician be a resident of Montana to be granted an active license. Many health care facilities depend on out of state physicians to temporarily cover shifts or a vacancy until a position can be filled. As for certifying for medical marijuana, the Medical Marijuana Act deems information about these physicians as confidential and, thus, the names cannot be obtained by the BOME. The board does act on any complaint filed against a licensee.

**Q** Has the BOME done anything to stop what looks to be "bad medicine?"

**A** The board has acted on every complaint filed against a licensee. Six complaints have been filed for reasons related to certifications, and one doctor was disciplined. In addition, the board has drafted a guidance document (position paper) that stresses the point that a physician must follow standard of care.

## What is a State Medical Board?

The Montana Board of Medical Examiners' primary responsibility and obligation is to protect health care consumers through proper licensing and regulation of physicians, telemedicine physicians, residents, physician assistants, podiatrists, nutritionists, acupuncturists and emergency medical technicians. The ability to practice in one of the licensed occupations is not an inherent right of an individual, but a privilege granted by the people of a state acting through their elected representatives. The public is protected from the unprofessional, improper and incompetent practice through laws and regulations. It is the duty of the Board of Medical Examiners to regulate the practice.

### Kinds of Physician Licenses

The Board issues four kinds of licenses: Physician, Specialized, Temporary, and Telemedicine.

### Telemedicine License

A telemedicine license authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets current requirements to take an exam to become board-certified. A telemedicine license does not authorize the physician to engage in the practice of medicine while physically present with the state.

"Telemedicine" is defined in statute as the practice of medicine by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment of correction of a patient's physical or mental condition, ailment, disease, injury or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device or instrumentality under certain conditions described in law.

## Board Quick Facts

- License and regulate acupuncturists, emergency medical technicians, nutritionists, physicians, residents, telemedicine physicians, physician assistants and podiatrists.
- 9,923 active licensees
- 4,108 active licensed physicians of which 2,532 are in-state
- 177 licensed telemedicine practitioners
- Receive about 170 complaints each year
- Takes an average of 30 days to get a license to practice medicine in Montana
- Board has 13 members. 12 members are appointed by the Governor and confirmed by the Senate. One member is selected by MT Academy of Physician Assistants.
- Board members serve staggered four year terms

## Board Contact Information

Jean Branscum, Executive Director  
Board of Medical Examiners  
Department of Labor and Industry  
301 S. Park  
Helena, Montana 59601  
406/841-2360  
jabranscum@mt.gov  
www.medicalboard.mt.gov